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WASTE SITE CLEANUP ADVISORY COMMITTEE
MEETING HIGHLIGHTS
September 15, 2005

Commissioner Golledge welcomed the group

- Introduced Janine Commerford, the new BWSC Assistant Commissioner
- NERO personnel will move back to Wilmington later this fall
- Revised regional office boundary lines will become effective from 6 to 9 months following the move
- A new MassDEP website will come online around the first week on October
- Enforcement activities in fiscal year 2005 were at record levels

Assistant Commissioner Janine Commerford discussed MassDEP and BWSC priorities

- Special initiatives such as the "schools project", piloted by SERO's study in Fall River http://mass.gov/dep/cleanup/sites/school.htm; other regions' studies will be released this fall
- Discussed recent BWSC perchlorate source work http://mass.gov/dep/water/drinking/percinfo.htm; internal and external communication, including enhancing regional service centers; WSC Advisory Committee reformation; training; enforcement and audits; and possibly reinvestment in technical assistance grants
- WSC Advisory Committee:
  - the next meeting is scheduled for Tuesday, November 22
  - discussion of suggestions for reforming the advisory committee
  - promise to share the list of suggestions with the group (See Below)

Paul Locke, BWSC, outlined the status of the regulations (formerly known as Wave 2) packages:

- Provisions that include the bulk of the original "Wave 2" package are under review by the Commissioner's Office. Release date will depend on progress of internal review and subsequent reviews by the Executive Office of Environmental Affairs (EOEA) and the Executive Office of Administration and Finance (A&F). When final sign-off is received, MassDEP will publish the final regulations on the website (http://mass.gov/dep/cleanup/news.htm) but will delay the effective date for approximately 3 months to allow for a smooth transition. For example, if approval were received October 1st, the implementation date would be approximately January 1st, 2006.

Once the approved regulations are published on the web, the numerical standards could then (and only then) be used, at your discretion, as Method 2 standards pursuant to 310 CMR 40.0982(7).

- Asbestos package has been revised based on public comment and continued workgroup discussions. MassDEP is awaiting the results of a pilot project that will provide data for determining appropriate notification criteria and disposal/re-use options. The LSPA has provided great assistance in refining the proposal and developing the analytical protocol for notification. The LSPA is also coordinating beta-testing of the analytical protocol, and anyone with soil that may contain asbestos is encouraged to contact Wes Stimpson for possible anonymous analysis of the soil.
- The MCP perchlorate cleanup standards and notification criteria have been packaged with the water supply MCL proposal and a revised toxicology report. The package is under final review before being released this fall for public comment. Check http://mass.gov/dep/ for news of this proposal.
- An additional small package of MCP modifications, known as “Wave 2b” for lack of a better name (suggestions welcome) is under development. The package will contain some numerical standards that are new or were changed as a result of issues raised during the public comment period. In addition, there is also a provision to provide greater flexibility for petroleum compounds in certain GW-1 areas. An external workgroup meeting to discuss the petroleum proposal and the results of recent MassDEP sampling will be held on Monday, October 17, 2005 from 9:30 am – 12:00 pm at the MassDEP Boston Office. See http://mass.gov/dep/cleanup/compliance/spring05.htm for more details.

Tom Angus, Office of Regulations and Standards discussed the status of Interim Ecological Risk Assessment Guidance Updates

- His handout will be attached to the regulations summary email (See Below)
- Of the 8 updates under review, the first 6 will be released for public comment this fall
- Promise to address the issue of when the updates become applicable: audience requested that regional auditors be clearly informed about when LSPs can begin to rely on the updates so there is no conflict if their sites are audited

Ken Marra, Division of Policy and Program Development presented the results of a "double blind" evaluation of 20 laboratories (19 commercial laboratories and the Wall Experiment Station). These labs analyze the vast majority of samples generated by 21e work in Massachusetts.

- Water and soil VOC samples were prepared to MassDEP specifications by a company selected for its qualifications and experience with laboratory proficiency testing.
- VOCs are among the most common analytes in 21e work
- Three identical rounds of samples were sent for testing during 2004
- Most labs were able to consistently identify and quantify the VOC contaminants
- The report documenting the study is being finalized and will be posted on the web within the next month. Look for it at http://mass.gov/dep/cleanup/news.htm.

BWSC has heard anecdotes for years that labs produce poor data; this study refutes these dire reports and makes it clear that the VOC data generated by these labs is, in fact, reliable.

ADVISORY COMMITTEE REFORMATION SUGGESTIONS
(including recommendations made by email)

What should be the committee's purpose?

- The advisory committee should revisit technical issues that keep surfacing, such as background.
- This advisory committee does not advise. To actually advise, members would need to be able to request information, review program data and take the initiative.
- The advisory committee should function as a clearinghouse.
- Unlike in 1993 when the new program was being formed, the difficult issues we now face are details and stealthy (obscure but important) issues. The committee should continue to meet to ensure that MassDEP doesn't inadvertently make a big mistake on them.

What has/hasn't worked on this advisory committee historically?

- The agenda and related material are not provided in advance, so there is no chance to review and digest them. Members are expected to provide on-the-spot comments.
- It was easy to provide real input when the new program was being formed.
- MassDEP staff for active workgroups should provide a status report at each advisory committee meeting.
- Advisory committee meetings should be able to work as constructively as MassDEP's workgroups do.
- The audience is an integral part of the dynamic.
- Municipalities are heavily involved in 21E problems; this advisory committee is the only forum for municipalities to express their concerns and hear those of others. They are often not represented, however.

What approach works/doesn't work for other advisory committees?

- Broad policy decisions can be effectively debated in a big group.
- It is hard to come to a consensus around a table with more than 8 to 10 people.
- Some advisory committees are formed to address a specific issue (e.g., wildlife habitat committee) while others (like EOEA's business and environmental committees) are open-ended and used to solicit information about issues that should be placed on the agency's agenda. The SAC is more of a hybrid.
- The Boston Harbor Islands Partnership sets its own agenda.

What should be the membership's composition?

- 56 percent of sites have petroleum contamination but there is only one member representing the petroleum industry
- Solicit nominations from the groups representing the sectors and ask them to nominate people to populate their seats
- Ensure that all stakeholder groups are represented.
- MMA, BOH, academics, and environmental groups haven't been represented at the meetings in a long time.
- There appears to be no difference in the quality and quantity of participation between the members and those in the audience that regularly attend advisory committee meetings.
- All the meetings (discussions, setting agendas, etc.) should be open to everyone.
- Increase PRP presence on the committee.
- Create a membership reserved for a representative of the utility industry.

What should be the membership's roles and responsibilities?

- Require that members actively interact with the constituency they represent and include as an agenda item time for them to share what they have heard from their groups.
- On the other hand, members all come from certain segments of the stakeholder universe, and thus their perspectives are shaped by their backgrounds, but the committee members don't always have to speak as advocates for their constituent segments. The idea is for people of diverse backgrounds to come together and develop policies, regulations, etc. that are best for the Commonwealth and the 21E program as a whole, even though they may not be the "best" for their respective constituencies.
- Encourage members to interact/communicate among themselves.
- Provide members with homework.
- If you have a limited group of people who have been selected specifically for their interest in the program, and who therefore feel a responsibility to follow through on assignments, you'll have a better chance of having a consistent source of input. Needless to say, those who accept these positions should be willing to follow through with meeting the concomitant responsibilities.

What should the agenda contain and who should set it?

- Schedule interim working meetings.
- Consider holding meetings whose purpose is strategic planning.
- Meetings should balance two agenda approaches: help getting the environment back on the front burner with the public/Beacon Hill and wrestling with technical issues.
- Hold a members-only meeting to set the agenda and prepare for the next scheduled meeting, which would include an audience.
- Alternate agenda topics between policy and detail discussions.
- Discussion should be on broader policies and guidance. DEP's focus lately has been on the lowest common denominator. Workgroups should be left to focus on minute technical detail.
- Meetings should last no longer than 1.5 hours.

What outreach issues should be pursued?

- Reconstitute a measures-of-success approach.
- Provide measures of success to help re-energize the committee and to attract new participants
- MassDEP's constituency is not in this room but is comprised of thousands of people on the outside
- Actively solicit stakeholder input and widely advertise bwsc.information as a portal to communicate with MassDEP.
- MassDEP has a great program compared to other states. Tell Beacon Hill how well the program is working.
- Arrange for a mass call-in telephone number so anyone interested in listening to advisory committee meetings can do so.
- Establish a revolving list of minute takers and place the notes on the web.

What new workgroups should be established? What agenda items need to be discussed?

- Establish a measures-of-success workgroup.

- Workgroups should be established by the SAC if needed, not just when DEP needs them.
- Include a discussion on modifying Notice of AUL Forms/Terms/Confirmations.
- Consider discussing ways to improve the quality of LSP submittals.
- "Background" definition is an example of a lingering issue needing discussion.
- Provide more of an emphasis on cleanup methodology.

What are the principal problems with the WSC program?

- MassDEP has lost its way. LSPs are looking for guidance but all they get is process. Cleanup as a goal is trumped by Monday morning quarterbacking.
- MassDEP is strong on the science but doesn't understand the program in the field.
- Applaud the effort to level the playing field but no good deed goes unpunished. It seems that the more paperwork an LSP submits, the more subject to MassDEP review the work is.
- Old contamination vs. new contamination – needs to be clearer that old (closed) sites stay closed even when there are new releases or new standards.

- Summary of Interim Ecological Risk Assessment Guidance Updates

September 2005

This Summary lists the issues that lead to the development of Technical Updates, the objectives of the technical updates, and finally the content and status of each proposed Technical Update.

Major Issues and Concerns about Current Ecological Risk Assessment Practice

1. Risk Assessments for surface water pathways do not always address effects on benthic invertebrates, even though this is often the group of organisms that is most susceptible to sediment contamination.
2. The results of ecological risk assessments have often been inconclusive or highly uncertain.
3. The high level of flexibility provided by existing guidance has lead to inconsistency in risk assessments among sites that are roughly equivalent. Risk assessment practices may be driven more by differences among PRPs and consultants than by differences in environmental conditions.
4. For major sites, ecological risk assessments have not always been sufficiently rigorous.
5. For minor sites and for resources of little ecological value, existing requirements often force assessment work that is too rigorous.
6. Measures of the risk of harm from sediment contamination (i.e., sediment concentration benchmarks, toxicity tests, community assessments) have often been applied and interpreted in ways that lead to uncertain or invalid conclusions and risk management decisions that are insufficiently protective.

Objectives of Technical Updates

1. To improve consistency in risk assessment practices.
2. To ensure that each risk assessment evaluates effects of contamination on all susceptible groups of organisms.
3. To ensure that the measurements used in ecological risk assessments are technically valid and sufficiently sensitive to detect significant risk or harm.
4. To streamline assessments for moderately contaminated sites and to eliminate assessment requirements in cases where adverse effects on the environment are highly unlikely.

Technical Updates

1. *Assessment Endpoints for Invertebrates* calls for assessing the effects of contamination on benthic invertebrates and their habitat in risk assessments when a site includes a freshwater pathway.
2. *Assessing Risk of Harm to Benthic Invertebrates* discusses measures of effects on benthic invertebrates and the interpretation of data from those measurements in risk assessments.
3. *Freshwater Sediment Toxicity Tests* provides guidelines for the use of sediment toxicity tests in MCP risk assessments.
4. *Averaging Area for Benthic Invertebrate Risk Assessment* limits the area over which sediment contaminant concentrations may be averaged.
5. *Revised Sediment Screening Values* increases the values for metals screening criteria (except mercury). This represents the first step toward developing Method 2 Sediment Standards. New values for metals are the proposed values for the Method 2 Standards.
6. *Evaluating the Ecological Value of Man-Made Surface Water Features* recommends eliminating any man-made surface water body that is not functioning as an ecological resource from MCP ecological risk assessment and risk management requirements.
7. *Area – based Screening Criterion for Sediment* allows the elimination of small areas of sediment contamination from MCP risk assessment/risk management requirements under certain conditions. **(In progress.)**
8. *Method 2 Standards for Sediment* provides sediment concentrations below which (for all contaminants of concern) a condition of "no significant risk" is assumed to exist. **(In progress.)**